NO. 472.

UNITED STATES CIRCUIT COURT OF APPEALS
NINTH CIRCUIT.

HERMAN CRAMER,

Plaintiff in Error,

Vs.

SINGER MANUFACTURING CO.,

Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

JOHN H. MILLER,
CRITTENDEN THORNTON,
For Plaintiff in Error.

United States Circuit Court of Appeals
in and for the Ninth Circuit.

HERMAN CRAMER,
Plaintiff in Error,

Vs.

SINGER MANUFACTURING CO.,
(a corporation),
Defendant in Error.

No. 472

BRIEF FOR PLAINTIFF IN ERROR, IN REPLY.

We are at a loss to conjecture the supposed legal influence of the mass of cases cited in the brief of the defendant in error in this cause, upon the facts of the case at bar. Counsel for the defendant in error has cited a large number of text books and decided cases to demonstrate the utility and abstract justice of the doctrine of *res adjudicata* as a measure of public policy. We should be the last persons in the world to contradict the authorities cited by counsel upon that point, or to deny the general justice of the rule as a maxim of public policy. We are convinced that the judges of this court are of the

same opinion. In fact, we can imagine the incumbents of this bench as they read the first few pages of the brief of the defendant in error, murmuring to themselves the words of the vexed patriarch of old, "Whoso knoweth not such things as these?"

II.

We shall take neither the time nor the trouble to review the multitude of cases cited by counsel for defendant in error, which merely affirm the rule of *res adjudicata* in its most general terms. Only those will be noticed by us which are supposed to have a peculiar and special application to the case at bar. The great number of cases cited in the brief of the defendant in error (pages 7–9, inclusive), as to a judgment declaring the validity or invalidity of a patent, are, likewise, totally irrelevant to the present discussion. There is not and never was in the case of *Cramer* vs. *The Singer Manufacturing Company and Willis B. Fry*, any judgment or decision that Cramer's patent was invalid. The issue was in that case whether Fry had infringed Cramer's patent. Such an issue by necessary implication must admit the validity of the patent alleged to have been infringed. As an abstract question of law, a patent cannot be declared invalid in the extreme sense except in a direct proceeding brought by the government. Such a judgment in such a proceeding would more nearly approach a judgment *in rem* than any other which could possibly be imagined or suggested. The suggestion in the brief of the defendant in error (page 10)

that an adjudication that a patent is invalid is in the nature of a judgment *in rem* is incorrect, except as applied to a decree repealing the last patent in a direct proceeding brought by the government which initiated it.

Only one statute passed by the Congress of the United States ever provided for a direct proceeding between adverse claimants of a patent, to declare a patent void in the extreme sense, which expressly provided for that mode and degree of relief; that was the 16th section of the Patent Act of 1836, 5th Statutes-at-large, page 123, which is as follows:

"Whenever there shall be two interfering patents, or whenever a patent on application shall have been refused on an adverse decision of a Board of Examiners on the ground that the patent applied for would interfere with an unexpired patent previously granted, any person interested in such patent, either by assignment or otherwise, in the one case, and any such applicant in the other case, may have remedy by bill in equity; and the court having cognizance thereof, on notice to adverse parties, and after due proceedings had, may adjudge and declare either of the patents void in whole or in part, or inoperative or invalid in any particular part or portion of the United States, according to the interest which the parties to such suit may possess in the patent or the invention patented, and may also adjudge that such applicant is entitled according to the principles and provisions of this act, to have and receive a patent for his invention as specified in his claim, or any part thereof, as the fact of priority of right or invention shall in any such case be made to

appear ; * * * * provided, however, that no such judgment or adjudication shall affect the rights of any person except the parties to the action and those deriving title from or under them subsequent to the rendition of such judgment."

This Statute was construed in the case of *Tyler* vs. *Hyde*, 24th Federal Cases, page 466 : S. C., 2 Blatch. 308. In that case the court held : "That a judgment or decree cannot be accepted as determining that point, unless it be direct and affirmative in terms and in the words of the statute. The court must adjudge and declare the patent void in the whole or in part, or inoperative or invalid in some particular part of the United States. A decree dismissing a bill in equity seeking that relief, does not imply such positive judgment, but on the contrary, it indicates that the court on the proofs before it was unable to render that specific judgment. At all events, it can not, in our opinion, be received and acted upon in another court and in a trial between other parties as amounting to the positive and affirmative declaration demanded by the statute. Had the decree of the Circuit Court asserted the interference of the patents, and declared Tyler's patent void, that decree would have been conclusive in this court on a trial at law.

Smith vs. *Kernochen*, 7th Howard, U. S. 198."

III.

Nor have we any quarrel with the authorities cited on page 13 of brief of defendent in error, as to the persuasive weight and effect as authority, or by the comity of

courts of equal and co-ordinate jurisdiction like the Circuit Courts of the United States, of the judgment or decision of another Circuit Court upon the same question. As we have before stated, there is not and never was a judgment against Cramer's patent in the sense of the quotation from Robinson on patents, cited on page 13 of brief of defendent in error. Nor have we any criticism to make upon the authorities cited on pages 14–18 inclusive, of the brief of our learned adversaries, that the same court, or that other courts of equal and co-ordinate jurisdiction should decide the same case or a similar case in the same way as indicated by the authorities cited by counsel on the pages named. The authorities cited amount to nothing but the opinions of the judges that the rules of legal decision should be consistent with themselves in order to have a harmonious system of jurisprudence. Therefore, we agree with the counsel, that if the Circuit Court of the United States, sitting in this circuit, should decide a patent case or any other case in a certain way, the District Judge or any other Circuit Judge holding a court within the circuit named, ought to decide the same case, or a case resting upon a similar state of facts, in the same way. The cases cited by counsel in his brief, amount to nothing more than an acknowledgment of the force of authority or legal precedents in any system of administration of the law. But in the case at bar the very point before the court is to decide whether the cases are the same, and we maintain that they are not. All the labored effort of counsel in that section of his brief to which we have referred, amounts to nothing more than

an attempt to prove that the force of legal authority and the doctrine of *res adjudicata* amount to the same thing. Nothing could be more absurd or unfounded than such an argument.

IV.

The views of counsel for defendant in error on the question of the admission in evidence of the opinion of Judge McKenna in the former action of *Cramer* vs. *Fry*, are entitled to the dubious merit of novelty. On the very threshold of the argument of counsel (brief page 18) the astonishing statement is made that the opinion of Judge McKenna was not submitted nor read to the jury. How this fact, if true, could improve the position of the defendant in error, is not entirely intelligible. We had always supposed that in the trial of an action at law, all the evidence had to be submitted to the jury, and that the jurors were triers of the facts in the case. Either the opinion of Judge McKenna in *Cramer* vs. *Fry* was admitted in evidence, or it was not. If it was admitted in evidence, we have heretofore endeavored to show that the admission was an error. If it was not admitted in evidence, there was no proof whatever of the ground or issue upon which the verdict was rendered in the case of *Cramer* vs. *Fry*. Upon this point the argument of counsel is enveloped in a haze which prevents its intents and purposes from being distinctly visible. He recognizes in his opening brief, by necessary implication, the proposition of law that evidence is necessary where the record

of the former judgment leaves the issue in doubt, to prove what that issue in fact was, and that for such a purpose both oral and documentary evidence is admissible. Now the only evidence upon the point was the opinion of Judge McKenna. The counsel for defendant in error begin their discussion of the subject by a statement which would tend to prove that even that opinion was not admitted in evidence at all. We repeat that if it was not, there was no evidence whatever of the issue upon which the verdict was rendered, and the peremptory instruction of the court to the jury that the former judgment was in law and in fact a bar, was erroneous upon any and every ground.

Upon the oral argument of this case we put the question to the counsel who argued on behalf of the defendant in error, "Was the opinion of Judge McKenna put in evidence to prove matter of fact or matter of law?" We admit that we were not then and are not now able to comprehend the answer then made by the counsel, but we comprehend the statement which the counsel for defendant in error made at the trial of this case in the court below upon this precise question. After having offered the opinion of Judge McKenna in evidence, Mr. Wheaton said (Record page 78): "If your Honor accepts the decision of Judge McKenna for what he describes in it, I think that provides the evidence." Mr. Wheaton certainly at that time thought that the opinion of Judge McKenna in *Cramer* vs. *Fry* was not only competent, but conclusive evidence of the facts therein

stated ; but what his present opinion is upon that subject, we confess ourselves utterly unable to understand. The case therefore stands in this position on this point, An action is brought for the infringement of a patent. The defense of *res adjudicata* is interposed. The record offered on its face shows that the judgment referred to was not in favor of the defendant in the case on trial, but in favor of a third person. The judgment offered on its face shows likewise, that verdict and judgment were rendered upon the ground of non-infringement. The judgment, therefore, is as ambiguous as it possibly can be. It may mean that Fry never had, or used, or made, or sold a sewing machine. It may mean that Fry never had or used, or made or sold a sewing machine with any treadle whatever, or it may mean that he never had made, sold or used a sewing machine with any treadle except one manufactured under the Diehl patent, which, it was claimed, was not an infringement of the plaintiff's patent. In this state of the case, it became necessary for the defendant in error to prove upon which of these three states of facts or issues the verdict and judgment in the former action were rendered. The defendant in error contended and now contends that it was founded on the third supposed case ; that is, that the machines manufactured under the Diehl patent, were not in the judgment of the court or according to the verdict of the jury, infringments of the machines constructed under the plaintiff's patent. In order to prove this, it became necessary to offer some evidence at least to show that the Diehl patent had been offered and submitted to the jury in the prior action, and

that the only machines made, sold or used by the defendant Fry, were those constructed under the Diehl patent. Now these things were certainly matters of fact and not matters of law, and the method adopted by counsel for defendant in error to prove them, was to offer in evidence the opinion of the court in the former action. If the opinion of the court was not evidence of the facts herein stated, there was no evidence at all in the present case to show the identity of the issue; but the counsel for the defendant in error at the time of the trial then thought and stated in express terms, that the facts stated in the opinion of Judge McKenna constituted the evidence of the identity of the issue. In fact, the opinion was all the evidence introduced. We repeat again with all the force of iteration, though it be "damnable," as Hamlet calls it, that if the opinion of Judge McKenna was not offered for the purpose of showing what were the facts and the issues in the former action, there was no evidence at all of the same.

That the opinion was not admissible, nor competent, nor sufficient, nor conclusive, is established by the authorities. No case cited by counsel for defendant in his brief (pages 18–27) ever held, or announced or maintained any such proposition of law. All that the cases decide is that where evidence is introduced in support of more than one issue upon which the former trial was had, and where evidence was introduced equally applicable to two or more issues, the opinion of the court may be examined for the purpose of showing the question of law which was actually decided,—not for the purpose of show-

ing what were the facts admitted in evidence. None of the cases cited by counsel affirms anything more than that which we have previously stated.

Corcoran vs. *Canal Company*, 94 U. S. 741, merely holds that a decree which in terms refers to an opinion on file, makes that opinion a part of the decree by necessary implication.

Last Chance Mining Company vs. *Tyler Mining Company*, 157 U. S., page 690, was not a case of an opinion, but of a finding. There is a difference between an opinion and a finding. If there had been a special verdict of the jury in the former action of *Cramer* vs. *Fry*, or a special finding by the court upon a trial by the court without a jury, to the effect that the machines manufactured by the defendant Fry were made under the Diehl patent, and that such machines were no infringement of the Cramer patent, no one could contend for a moment that that finding or special verdict was not sufficient proof of, and conclusive upon that issue.

As an example of the authorities cited by counsel for the defendant in error, upon the proposition that the opinion of Judge McKenna was competent evidence of the facts therein stated, we take the case of *Green* vs. *The City of Lynn*, 55 Fed. Rep., page 516. This case is so decisive in support of the views we entertain upon the question discussed, that we cannot forbear to make copious citations from it.

"PUTNAM, Circuit Judge. Preliminary to the final "hearing of this case a question of proof arose, which "was disposed of at the time without examination of

"authorities, and should now be re-stated. The defend-
"ant called the attention of the court to the opinion of
"the Supreme Court in *Andrews* vs. *Hovey*, 123 (U. S.,
"267, 8 Sup.Ct. Rep. 101), re-affirmed February 10, 1888
"(124 U. S. 604, 8 Sup. Ct. Rep. 676), declaring void
"one of the patents in issue here on the ground of prior
"public use. This opinion involved a serious question
"of law touching the construction of Section 7 of the Act
"of March 3, 1839, then for the first time settled; and
"also a question of fact whether or not there had been
"a prior use within the meaning of that statute as con-
"strued by the court. The court found against the pat-
"ent on the issue of law, and also on that of fact. This
"decision was handed down in November, 1887, more
"than four years after the bill in this case was filed, and
"more than four years before the question hereinafter
"stated was raised in this court, so that the defendant
"had more than ample time to put itself in proper posi-
"tion to avail itself of the conclusions in *Andrews* vs.
"*Hovey*.

"Under these circumstances, the defendant produced
"and offered in evidence two large volumes, containing
"the record in *Andrews* vs. *Hovey*, prepared and printed
"in accordance with rule 10 of the Supreme Court (3 Sup.
"Ct. Rep. 8). I refer to that rule in this connection in
"order to specifically describe the nature of the volumes
"thus offered in evidence, and to clearly distinguish them
"from a certified copy of the record of the court in the
"strict sense of the word, although I am not aware that
"the latter would have met the purpose in question any

"better than the volumes offered. There was not offered "with these volumes any independent evidence of the "facts proven in *Andrews* vs. *Hovey*, although subsequently "a certified copy of the deposition of the complainant in "this case given in *Andrews* vs. *Hovey* was put in evi- "dence, the same being clearly relevant,—not as a deposi- "tion, but as an admission.

"The complainant objected to the reception of the "two volumes in question, and April 26, 1892, moved "that the same be stricken from the record. It then "appeared that the volumes had simply been produced "before the examiner, with the intention of filing them "as evidence in the cause, but had never been formally "thus filed; so that the motion of the complainant was "in all respects seasonable. At the hearing on this motion "neither counsel was able to produce authorities bearing "upon it, or to satisfy the court that any special practice "in suits of this nature had become established. There- "upon the court applied to the case well-known rules of "evidence governing proceedings in equity, as well as at "law, and granted the motion of the complaint. The "court has since been able to make some examination of "the authorities, and believes its rulings to be fully sus- "tained by them.

"It is to be observed that this question did not arise " on a motion for an *ad interim* injunction, with reference " to which the rules of evidence are not strict, but are " moulded to meet the convenience of a summary hearing. " This may safely be done, as the ultimate rights of par- " ties are not then involved.

" Of course the findings of the Supreme Court in " *Andrews* vs. *Hovey* on questions of law are conclusive " on all other courts. The same is true as to its findings " of fact, with reference to any other cause in which the " court perceives that the proofs are substantially the " same as those which came before the Supreme Court. " The reasons for this need not be elaborated, but this " distinction is to be noted : that when the parties are " not the same in each case, the determinations of issues " of fact by the Supreme Court do not operate strictly as " *res adjudicata*, or as a technical estoppel, but merely " upon the conscience of the inferior tribunal. How are " the cases to be brought together for this purpose ? An " answer based on the fundamental rules of law seems " simple. First, it is essential that the facts brought to " the attention of the Supreme Court should be proven " in the pending cause independently, according to the " ordinary rules of evidence ; and thereupon the court in " the pending cause should advise itself as best it may of " what appeared to the Supreme Court—ordinarily from " the opinion rendered by it, and if this is not sufficient " in detail, from an informal perusal of whatever was laid " before it. As this ascertainment is merely to inform " the conscience of the court in the pending cause, " and to enable it to follow the line of reasoning and con- " clusions of the appellate tribunal, there is no occasion " for burdening the case with the formal proof of what " appeared in the Supreme Court, nor is there any pro- " priety in so doing. Therefore it was that this court " granted the motion of the complainant to strike out the

" two volumes in question, and held that the defendant, " if it sought to avail itself of the reasoning and conclu- " sions in *Andrews* vs. *Hovey*, must prove the substantial " matters which there appeared as independent facts, " according to the usual rules of evidence.

" 3 Rob. Pat., Secs. 1017, 1175, touches this question. " This portion of this work must, however, be read with " care, because, as is too frequent in discussions of this " and kindred questions, sufficient discrimination is not " made between the rules touching interlocutory and *ad* " *interim* injunctions, and those pertaining to final hear- " ings. The court conceives, however, that the author " correctly states the principal in Section 1175, as follows: " 'the weight to be attached to any judgment in favor of " a patent, as evidence of its validity in future actions, " depends upon the identity of parties, the identity of " issues, the identity of testimony,' and so on. By the " words 'the identity of testimony,' the author evidently " means that the same facts must be proven in each case " independently.

" In *Edgarton* vs. *Manufacturing Co.*, 9 Fed. Rep., 450, " the court, being asked to apply decision in several " cases to a pending patent cause, said as follows: 'But " the proofs in *Brown* vs. *Whittemore*,' (5 Fish. Pat., Cas. " 524,) meaning one of the other cases, 'on the question " of prior use and sale with the consent of the patentee, " and in *Edgarton* vs. *Breck*' (5 Ban. & A., 42), meaning " also one of the other cases, 'on the question of invalid- " ity, do not seem to have been the same as in the cases " now before the court. * * * * Of course, if the

" testimony in these cases was substantially the same as " that in the cases heretofore decided by the learned " judges in the Massachusetts Circuit Court, I should " feel wholly bound by their decisions, and the construc- " tion of the patent given by them.' In *McCloskey* vs. " *Hammil*, 15 Fed. Rep., 750, the court, touching a like " proposition, said: 'The facts which the plaintiff " proved upon the second hearing (meaning a second " hearing in a prior cause), are the same which he relied " upon in this case.' In *Celluloid Manufacturing Co.* vs. " *Zylonite Brush and Comb Co.*, 27 Fed. Rep., 291, " the court said (page 295): 'The facts presented by " the record are so strictly similar to those in' (naming a " case on the same patent, previously heard by another " tribunal). In *American Bell Telephone Co.* vs. *Wallace* " *Electric Telegraph Co.*, 37 Fed. Rep., 672, the court spoke " of 'the examination of the record,' meaning plainly the " record in the then pending case, made to ascertain " whether distinguishable from cases theretofore decided."

" None of these expressions indicate that the question " now under consideration was formally presented, nor do " they show distinctly how the record in each pending " suit was made up; but the form of them carries a deci- " ded impression that no rule, except that which this " court adopted, as already stated, ever occurred to them. " Therefore, in applying the conclusions of *Andrews* vs. " *Hovey*, this court is—First, to inquire what facts are " proven in the pending case by independent evidence, " given under the ordinary rules of law; and second, to " examine the opinions of the Supreme Court, and the

"line of reasoning and conclusions which they exhibit, "and from these or otherwise—but not by formal evi- "dence—become satisfied whether or not the proofs of "which the latter court took cognizance were substan- "tially the same as those in the case at bar. If they "were, its line of reasoning and conclusions bind the con- "science of this court upon the questions of fact involved; "otherwise they fail to do so, perhaps wholly, perhaps in "part."

We therefore regard the case of *Green* vs. *The City of Lynn* as a most direct and positive adjudication of the question in our favor.

In conclusion, the argument on this question may be reduced to its simplest possible form. The opinion of Judge McKenna was offered in evidence to prove either matter of law or matter of fact. If it had been offered to prove matter of law, it was unnecessary and superfluous. This court or any other court would have a right to take judicial notice of it. It is published in the official edition of reports of cases decided by the Federal Courts. It was no more necessary, upon the view of counsel that it was offered to prove matter of law, to introduce it in evidence, than it would be for us to offer in evidence the case of *ex parte Milligan*, 4th Wallace, upon the hearing of a petition for a writ of habeas corpus for a civilian tried before a court martial in time of peace. If, on the other hand, the opinion was offered to prove matter of fact, it was absolutely incompetent and its admission was grossly erroneous. To carry the matter a step further: If the opinion of the court was competent proof of the

facts therein stated, in a patent case, why not in every case? If an action of ejectment were brought upon a confirmed and patented Spanish grant, as for example, the case of *Waterman* vs. *Smith*, 13 Cal., p. 322, and the judgment was reversed as in that case, what necessity would there be for the plaintiff to do more than read to the jury upon the re-trial the opinion of the Supreme Court as contained in the official volume of reports, as conclusive proof of the source and deraignment of his title? It would simplify judicial proceedings wonderfully.

An attempt is made to show that the defendant in error was prevented from introducing evidence upon the trial as to the identity of the issues, by the conduct of counsel for plaintiff in error. Nothing could be more unfounded than any assertion to this effect. The real gist and substance of the objection of Mr. Miller was, that he opposed any ruling of the court which would permit the admission of a single piece of evidence, to wit: Exhibit "G" (Record page 76), without requiring the defendant in error to go into the proof of his whole case on that point. This is apparent from the remarks of the Court and Mr. Miller, at bottom of page 76:

"*The Court:* I am inclined to think that it is immaterial, unless we go into the whole question of what evidence was offered in the former case.

Mr. Miller: The whole evidence would have to be gone into.

The Court: Yes.

Mr. Offield: It seems to me that it is relevant in this to show that there is no difference upon the question of

infringement. To show that the question of infringement determined in that case was precisely the same, and that this is the same machine."

The objection terminated with a ruling substantially in favor of Mr. Miller's objection, which was that the defendant could not be permitted to offer a part or a single piece of his testimony without offering the whole. In other words, that he must stand upon the case as made at the time by the admission of Judge McKenna's opinion, or that he must proceed to offer testimony as to all the matters in evidence on the trial of the former action. Such being the real state of facts, the labored discussion of counsel for the defendant in error, that the necessary and proper evidence was excluded upon the objection of the plaintiff in error, dwindles into insignificance.

VII.

We have not been favored with any reply to our argument that a judgment which is in terms without prejudice to the commencement of a new action by Cramer against the Singer Company, upon the same cause of action, can not by any legal possibility be a bar. The learned counsel indulge, on page 1 of their brief, in the always facinating habit of discussing the case which is not, instead of a case which is. Of course, if Cramer had never sued the Singer Company in the former action, and no judgment without prejudice had been rendered in favor of the Singer Company, the discussion of the present case would be immaterial; but the trouble with the argument of coun-

sel is that Cramer did sue the Singer Company, and such a judgment was rendered. The question, therefore, does arise upon the face of the record, and it is the duty of this court to decide it, and we have attempted to show in our own meek and humble way, that it is the duty of the court to decide that such a judgment is no bar. No authority is cited by counsel for defendant in error that such a judgment is or can be a bar; that in a case where two defendants are sued and a judgment follows in favor of one, without prejudice to his adversaries' right to maintain a new action upon the same cause of action, and a judgment on the merits in favor of the other party, that the judgment in favor of the Singer Company is not a bar in its favor, but that the judgment in favor of the other defendant is a bar in its favor. We should have thought if any authority ever existed or could exist for such a proposition, that the industry of counsel would have discovered it. We are therefore certain that the reason why such authority is not cited, is that it does not and could not exist. As we said in the oral argument, such a case could never have arisen according to the strict common law practice. The fact that the common law rule that the plaintiff must recover against both of two joint tresspassers, or none, is repealed by statute, can not effect the binding force of a judgment upon the issues as *res adjudicata* between the several parties. We contended and do contend that there can be but one judgment in an action at law, no matter how numerous the parties to the action may be, or the variety of the issues joined; that a judgment is the final determination of the

rights of the parties to an action, and that the judgment, and the only judgment which can be rendered or engrossed or enrolled, is one judgment. This precise point is decided in *Paige* vs. *Roeding*, 96 Cal., 388, and *Colton* vs. *Schwartz*, 99 Id., 278. The ordinary practice, where one defendant is dismissed before trial, is to enter the order of dismissal, upon which the case proceeds no further as to the defendant dismissed, and after the cause has been completely tried against the remaining defendant or defendants, to insert a clause disposing of the defendant hitherto dismissed. Such is almost the universal practice. We contend that in the case at bar, the plaintiff in error cannot suffer because the clerk entered two judgments, or rather one judgment upon two different pieces of paper. The necessary result of holding that there can be two judgments, is necessarily to hold that there can be two judgment-rolls in the same action, which is impossible. All of that, however, which we regard as a simple error in practice and not affecting the validity or legal construction of the judgments entered, may be disposed of by holding that the two judgments are in substance and in legal effect but one. If the court should reach this conclusion, the question for solution becomes an easy one. The question before the court would then be whether a judgment containing a decision on the merits in favor of one defendant, and a judgment without prejudice in favor of the other defendant, could by any possibility be a bar in favor of the latter against the plaintiff in the case, in a subsequent action. Our

position, to state it in the simplest terms, is that the limitation or qualification of the legal effect of the judgment embraced in the words "without prejudice to the right of the plaintiff to maintain another action against the defendant upon the same cause of action," is universal and all-embracing, and limits the legal force and effect of any and every judgment that possibly can be rendered in the cause.

All of which is respectfully submitted.

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For Plaintiff in Error.